

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

WP(C).No. 6977 of 2007(E)

OS.338/1993 of SUB COURT,KATTAPPANA

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PETITIONER/PETITIONER/ DEFENDANT :

**RAMABHAI, W/O. MURALEEDHARAN,
BIJU BHAVAN, RESIDING AT BLOCK NO.403,
THOOKKUPALAM KARA, KALLAR P.O.,KARUNAPURAM VILLAGE
UDUMBANCHOLA TALUK.**

**BY ADV. SRI.C.J.JOY
SRI.KURIAKOSE G.THEKKEL**

RESPONDENTS: RESPONDENT/PLAINTIFF:

**VALSALA P.M., W/O. SOMAN,
RESIDING AT BLOCK NO.413, PUTHENPURACKAL HOUSE,
THOOKKUPALAM KARA, KALLAR P.O.,KARUNAPURAM VILLAGE
UDUMBANCHOLA TALUK.**

BY ADV. SRI.MILLU DANDAPANI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

- EXT. P1 TRUE COPY OF PRELIMINARY DECREE DTD.6.4.95 IN O.S. 338/03 OF
SUB COURT, KATTAPPANA.
- EXT.P2 TRUE COPY OF JUDGMENT DTD. 6.3.03 IN AS 55/96 OF THIS COURT.
- EXT.P3 TRUE COPY OF HE COMMISSIONER'S REPORT DTD.2.9.05 IN IA
738/04 IN OS 338/03 OF SUB COURT KATTAPPANA.
- EXT.P4 TRUE COPY THE OBJECTION DTD.30.11.05 FILED BY THE
RESPONDENT/PLAINTIFF TO EXT.P3 COMMISSIONER'S
REPORT.
- EXT.P5 TRUE COPY OF THE I.A.1654/05 FILED BY THE PETITIONER TO EXT.P3
COMMISSIONER'S REPORT .
- EXT.P6 TRUE COPY OF ORDER DD.12.2.007 DISMISSING EXT.P5 I.A.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.
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W.P.C. NO. 6977 OF 2007
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Dated this the 31st day of May, 2007.

J U D G M E N T

This writ petition is filed to set aside the order in I.A.1654/05 in O.S.338/93. The suit was one for partition and the preliminary decree directs the property to be divided into two equal shares and the trial court granted a decree reserving the right in favour of the defendant with respect to the room where in he is conducting the business. But in appeal this Court directed the properties to be divided into two equal shares by metes and bounds over the 4.75 cents of property and at the time of passing the final decree the Court below was directed to consider the convenience of the parties in allotment of shares. Accordingly a Commissioner was appointed to divide the property by metes and bounds with the assistance of a civil engineer and a surveyor.

2. At the outset it has to be stated that the property to be divided is a narrow strip of land with a building having two rooms. The civil engineer who assisted the Commissioner measured the property in the occupation of the defendant and the plaintiff. The eastern room was having an area of 33.285 sq.mt.

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and the other room is having an area of 16.175 sq.mt. Or in other words, the defendant was in possession of a large extent of property. So the engineer and the Commissioner in order to have equitable distribution of the building suggested a method to divide the said thing in two equal shares of 24.64 sq.mt. each and separate sketches were also prepared. For effecting equal partition of the building, a new wall has to be constructed in between room Nos.1 and 2 at the marking indicated specifically by the Engineer in his Annexure II-C sketch. It is also indicated in Annexure I sketch in red line and that the plaintiff shall retain the existing wall for the safety of the building. So, after the compartmentalisation is over by construction of a new wall, the area to be divided is a very small area and that has to be used as a pathway for the property behind the building. It is true that there cannot be an effective use of the added extent. But the effective use of added extent is in the form of a passage to the backyard which is also a sine quanon for enjoyment of the property in toto. Therefore, the plan and report submitted by the Commissioner with the assistance of the surveyor and engineer appears to be correct and it is the only way in which this tiny

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piece of land can be divided. Therefore, I feel the Court below was right in not interfering with the said report and did not find any ground to set aside the Commissioner's plan and report.

3. So far as the valuation to be given to the puramboke land which is lying as a way, an amount of Rs.4,050/- was directed to be paid by the defendant to the plaintiff. I think such a direction need not be granted because passage for the other man is also necessary for a convenient enjoyment of the property. So, the said statement in the Commissioner's report need not be accepted.

4. The learned counsel for the writ petitioner submitted that puramboke land is also divided and the Commissioner has mentioned about the patta lands and non-patta lands and he has specifically stated that non-patta land is lying as a way having a width of 3 feet and exclusively allotted to the share of the defendant for his ingress and egress. Therefore, the said allotment need not have to be disturbed and I had already directed no land value is to be given by the defendant for the said pathway. So, that grievance also stands redressed. From the foregoing discussions, I do not find any ground to interfere with

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the order passed by the trial Court, i.e., refusing to set aside the Commissioner's plan and report and therefore the writ petition is dismissed.

M.N. KRISHNAN, JUDGE.

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